

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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UNITED STATES OF AMERICA, : Case No. 1:18-cr-0043
:
Plaintiff, :
:
- v - : **Jury Instructions**
:
YANJUN XU, also known as XU : Wednesday, November 3, 2021
YANJUN, also known as QU HUI, : 9:30 a.m.
also known as ZHANG HUI, :
: Cincinnati, Ohio
Defendant. :

* * *

EXCERPT OF TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE TIMOTHY S. BLACK, DISTRICT JUDGE

For the Plaintiff: TIMOTHY S. MANGAN, ESQ.
EMILY N. GLATFELTER, ESQ.
Assistant United States Attorneys
221 East Fourth Street, Suite 400
Cincinnati, Ohio 45202
and
MATTHEW J. MCKENZIE, ESQ.
United States Department of Justice
National Security Division
950 Pennsylvania Avenue NW
Washington, D.C. 20530
and
JACQUELINE K. PRIM
Special Assistant, Paralegal
United States Department of Justice
National Security Division
950 Pennsylvania Avenue NW
Washington, D.C. 20530

For the Defendant: RALPH W. KOHNEN, ESQ.
JEANNE MARIE CORS, ESQ.
SANNA-RAE TAYLOR, ESQ.
Taft Stettinius & Hollister
425 East Walnut Street, Suite 1800
Cincinnati, Ohio 45202
and

1 ROBERT K. McBRIDE, ESQ.
2 AMANDA JOHNSON, ESQ.
3 Taft Stettinius & Hollister
4 50 East RiverCenter Boulevard
5 Suite 850
6 Covington, Kentucky 41011
7 and
8 FLORIAN MIEDEL, ESQ.
9 Miedel & Mysliwiec, LLP
10 80 Broad Street, Suite 1900
11 New York, New York 10004

7 Also Present: Mae Harman, Interpreter
8 Robin Murphy, Interpreter
9 Yanjun Xu, Defendant

9 Law Clerk: Cristina V. Frankian, Esq.

10 Courtroom Deputy: Rebecca R. Santoro

11 Court Reporter: M. Sue Lopreato, RMR, CRR
12 Potter Stewart U.S. Courthouse
13 Southern District of Ohio
14 100 East Fifth Street
15 Cincinnati, Ohio 45202
16 513.564.7679

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1 P R O C E E D I N G S

2 (In open court at 9:31 a.m.)

3 * * *

4 THE COURT: It's 9:26, 9:28, we're back in the
5 courtroom on the record in the criminal trial of the United
6 States versus Xu. The jury is not yet present.

7 The government team appears present, the defense as well,
8 including the defendant and two interpreters. We're on the
9 record outside the presence of the jury.

10 I want to enter an order relating to coconspirator
11 statements. I conditionally admitted them. Now that the
12 government has rested, the Court finds fully that the
13 coconspirator statements are admissible pursuant to
14 Rule 801(d)(2)(E).

15 That rule provides that the statements of a coconspirator
16 made during the course and in furtherance of a conspiracy are
17 not hearsay; however, a predicate for the admission of alleged
18 hearsay statements of a coconspirator is proof of the
19 existence of a conspiracy as determined by a trial court,
20 based upon a preponderance of the evidence, *United States v.*
21 *Barrett*, Sixth Circuit.

22 The district court may admit the challenge statements
23 subject to the condition that the government will later
24 demonstrate that the requirements of the rule have been met,
25 *United States v. Pressley*. That's what I've done here.

1 The Court should rule on the admissibility of hearsay
2 evidence at the close of the government's case in chief.
3 That's what I'm doing here.

4 Here the Court finds that the government sufficiently met
5 its burden by a preponderance of the evidence, as supported by
6 corroborating evidence and testimony. The defendant was a
7 member of that conspiracy and that the statements were made in
8 furtherance of the conspiracy.

9 Accordingly, the coconspirator statements are admissible
10 pursuant to Rule 801(d)(2)(E), and conspiracy should be
11 plural.

12 It is so ordered.

13 Last night, the Court's law clerk, by email, memorialized
14 my finding regarding the government's oral motion to limit
15 certain statements by the defense in closing. I wish to
16 memorialize it as a Court order.

17 The Court has determined that it will not limit the
18 defense's closing arguments in advance; however, should
19 defense counsel make argument that could reasonably be
20 construed as implying that the jurors may consider either
21 ignorance of the law, i.e., that IP laws of other countries
22 are different, or entrapment, i.e., that the defendant was
23 tricked into violating the law, the Court will be responsive
24 to an objection from the government, and I will interrupt
25 closing to instruct the jury to disregard any such arguments.

1 It is so ordered.

2 The government has rested. The exhibits have been
3 admitted into evidence as we went along. Stipulations are no
4 longer relevant because we deal with them in the instructions
5 or in the course of the trial.

6 Is there anything further from the government?

7 MR. MANGAN: No, Your Honor.

8 THE COURT: Very well. And as to the defense, I
9 would propose, when the jury comes in, to remind them that the
10 government has rested, and then ask where are we from the
11 defendant's perspective, unless defense wants me to address it
12 differently.

13 Is that amenable to the defense?

14 MR. KOHNEN: Yes, it is. Thank you, Judge.

15 THE COURT: So you're going to rest in the presence
16 of the jury?

17 MR. KOHNEN: That's ideal. Thank you. Yes, Judge.

18 THE COURT: Very well. At that point, I will advise
19 them that the evidence is closed, that we are proceeding to
20 jury instructions, which will be followed today by the
21 government's closing argument, the defendant's closing
22 argument, and the government's final rebuttal, if any, as
23 reserved. I will then charge the jury, read the jury
24 instructions.

25 At the completion of reading the jury instructions, I

1 propose to release the alternates, and then take a 15-minute
2 break and come back for the government's closing argument that
3 I would like to complete in one fell swoop, and then
4 presumably break for lunch.

5 After lunch, we do the defendant's closing argument, the
6 government's rebuttal, if any, and then we would send the jury
7 to deliberate mid- -- early, midafternoon.

8 I would advise them that we will check with them as to
9 their preferences at the standard release time of 4:30. I'm
10 likely to advise them to take as much time or days as they
11 need.

12 Does that proposed chronology provoke any comment or
13 questions, first from the government?

14 MR. MANGAN: Your Honor, if I understood you right,
15 our understanding is that the alternates would stay through
16 closing arguments and only be released at the end, when they,
17 the jury of 12, goes to deliberate.

18 THE COURT: I agree. That was my mistake. Thank you
19 for speaking up.

20 MR. MANGAN: Otherwise, that's fine, Your Honor.

21 Do you wish the government to set a certain amount that
22 we wish to reserve for rebuttal? We do want to do a rebuttal,
23 so I wanted to make that clear.

24 THE COURT: Yes. I think you should -- I'm not
25 limiting you on timeline, I just think you ought to indicate

1 that you reserve adequate time for rebuttal. Is the
2 government comfortable with that?

3 MR. MANGAN: Yes, Your Honor. Thank you.

4 THE COURT: Defense as well?

5 MR. KOHNEN: Yes, Your Honor. The schedule fits.
6 Thank you.

7 THE COURT: And is the government moving to formally
8 admit evidence in the jury's presence, or do I just state that
9 the evidence is -- the exhibits have been admitted and will be
10 available to them and the evidence is closed?

11 MR. MANGAN: I think the statement that you just said
12 would be fine, Your Honor.

13 THE COURT: And which statement was that?

14 MR. MANGAN: The statement that the evidence has been
15 admitted and will be available for the jury at the close.

16 THE COURT: And is the government comfortable -- are
17 the defense comfortable with that?

18 MR. KOHNEN: Yes, Your Honor.

19 THE COURT: Well, I would propose to get the jury.
20 Is the government ready?

21 MR. MANGAN: Yes, we are.

22 THE COURT: And the defense?

23 MR. KOHNEN: Yes, Judge.

24 THE COURT: Very well. Let's call for the jury.

25 (Jury in at 9:40 a.m.)

1 THE COURT: You my all be seated. Thank you. The
2 15 members of the jury have rejoined us in the courtroom after
3 a break over the weekend until today. Thank you for your
4 patience and understanding. Thank you for your continuing
5 work.

6 As you recall, when we were last here Friday, the
7 government rested, having presented its case.

8 How does the defense intend to proceed?

9 MR. KOHNEN: Your Honor, the defense rests.

10 THE COURT: Very well. The evidence is closed. The
11 exhibits are in evidence and will be provided to you in hard
12 copy in your jury deliberation room.

13 I'm going to instruct you in the law at this time, and we
14 will take a break after that.

15 We've prepared written copies of what I'm going to read
16 to you for each of you, in the event that you find that
17 helpful.

18 Could we distribute the jury instructions to the jurors,
19 Ms. Santoro?

20 COURTROOM DEPUTY: Yes.

21 THE COURT: After the jury instructions have been
22 read to you, we'll take a break, and you'll come back, you'll
23 hear closing argument. The government goes first, followed by
24 the defense. The government gets the last word. Closing
25 argument is not evidence. It's designed to argue their

1 position upon the evidence.

2 Do they have the verdict forms as well, Ms. Santoro?

3 COURTROOM DEPUTY: Yes, Judge.

4 THE COURT: Very well. Everybody has their own
5 packet. Now look at me for a minute. I told you this once
6 before about reading stuff aloud. Last time it occurred for
7 me was when my mother was trying to get me to go to sleep.

8 I need you to bear with me, and listen and read carefully
9 the jury instructions. You'll have a copy going back up with
10 you to the jury room. But forgive me, I'm going to read it
11 all. I'm going to start on page 1.

12 Members of the jury, now it is time for me to instruct
13 you about the law that you must follow in deciding this case.
14 I will start by explaining your duties and the general rules
15 that apply in every criminal case.

16 Then I will explain the elements, or parts of the crimes
17 that the defendant is accused of committing. Then I will
18 explain some rules that you must use in evaluating particular
19 testimony and evidence. Last, I will explain the rules that
20 you must follow during your deliberations in the jury room and
21 the possible verdicts that you may return.

22 Please listen carefully to everything I say. As to
23 jurors duties, you have two main duties as jurors. First, you
24 must decide what the facts are from the evidence, which you
25 saw and heard here in court. Deciding what the facts are is

1 your job, not mine, and nothing that I have said or done
2 during this trial was meant to influence your decision about
3 the facts in any way.

4 Second, your duty is to take the law that I give you,
5 apply it to the facts, and decide if the government has proved
6 or not proved the defendant guilty beyond a reasonable doubt.

7 It's my job to instruct you about the law, and you're
8 bound by the oath that you took at the beginning of the trial
9 to follow the instructions that I give you, even if you
10 personally disagree with them.

11 This includes the instructions that I gave you before and
12 during the trial, and these instructions. All the
13 instructions are important. You should consider them together
14 as a whole.

15 The lawyers may talk to you about the law during their
16 closing arguments, but if what they say is different from what
17 I say, you must follow what I say. What I say about the law
18 controls.

19 Perform these duties fairly. Do not let any bias,
20 sympathy, or prejudice that you may feel toward one side or
21 the other influence your decision in any way.

22 As to the presumption of innocence, the burden of proof
23 and reasonable doubt. As you know, the defendant has pleaded
24 not guilty to the crimes charged in the document called an
25 indictment. The indictment is not evidence, any evidence at

1 all, of guilt. It's just the formal way that the government
2 tells the defendant what crimes he is accused of committing,
3 but does not even raise any suspicion of guilt.

4 Instead, the defendant starts the trial with a clean
5 slate, with no evidence at all against him, and the law
6 presumes that he is innocent. This presumption of innocence
7 stays with him unless the government presents evidence here in
8 court that overcomes the presumption and convinces you beyond
9 a reasonable doubt that he is guilty.

10 This means that the defendant has no obligation to
11 present any evidence at all, or to prove to you in any way
12 that he is innocent. It is up to the government to prove that
13 he is guilty, and this burden stays on the government from
14 start to finish. You must find the defendant not guilty
15 unless the government convinces you beyond a reasonable doubt
16 that he is guilty.

17 The government must prove every element of the crimes
18 charged beyond a reasonable doubt. Proof beyond a reasonable
19 doubt does not mean proof beyond all possible doubt. Possible
20 doubts or doubts based purely on speculation are not
21 reasonable doubts. A reasonable doubt is a doubt based on
22 reason and common sense. It may arise from the evidence, the
23 lack of evidence, or the nature of the evidence.

24 Proof beyond a reasonable doubt means proof which is so
25 convincing that you would not hesitate to rely and act on it

1 in making the most important decisions in your own lives. If
2 you're convinced that the government has proved the defendant
3 guilty beyond a reasonable doubt, say so by returning a guilty
4 verdict. If you're not convinced, say so by returning a not
5 guilty verdict.

6 As for improper considerations. As I will explain more
7 fully in a moment, your verdict must be based solely upon the
8 evidence developed at trial or the lack of evidence.

9 In reaching your decision as to whether or not the
10 government met its burden of proof, it would be improper for
11 you to consider any personal feelings that you may have about
12 the race or national origin of the defendant.

13 It would be equally improper for you to allow any
14 personal feelings you might have about the nature of the
15 crimes charged to interfere with your decisionmaking process.

16 To repeat, your verdict must be based exclusively upon
17 the evidence or the lack of evidence in the case. And you
18 must always remember that the defendant is presumed innocent,
19 and the government bears the burden of proving guilt beyond a
20 reasonable doubt.

21 As to evidence defined. You must make your decision
22 based solely on the evidence that you saw and heard here in
23 court. Do not let rumors, suspicions, or anything else that
24 you may have seen or heard outside of court influence your
25 decision in any way.

1 The evidence in this case includes only what the
2 witnesses said while they were testifying under oath, the
3 exhibits that I allowed into evidence, and the stipulations
4 the lawyers agreed to.

5 Nothing else is evidence. The lawyers' statements and
6 arguments are not evidence. The questions the lawyers asked
7 are not evidence. The lawyers' objections are not evidence.
8 My legal rulings are not evidence. And any comments I may
9 have made or questions I may have asked are not evidence.

10 During the trial, I did not let you hear the answers to
11 some of the questions that the lawyers asked. You must
12 completely ignore those questions. Do not even think about
13 them. Do not speculate what a witness might have said. These
14 things are not evidence. You're bound by your oath not to let
15 them influence your decision in any way. Make your decision
16 based solely on the evidence, as I have defined it here, and
17 nothing else.

18 As to consideration of the evidence. Once again, you're
19 to consider all the evidence that you saw and heard in this
20 case. You should use your common sense in weighing that
21 evidence. Consider the evidence in light of your every day
22 experiences with people and events, and give the evidence
23 whatever weight you believe it deserves. If your experience
24 tells you that certain evidence reasonably leads to a
25 conclusion, you're free to reach that conclusion.

1 As to direct and circumstantial evidence. I'm going to
2 remind you of the difference between them. Direct evidence is
3 simply evidence like the testimony of an eyewitness which, if
4 you believe it, directly proves a fact.

5 If a witness testified that he saw it raining outside,
6 and you believed him, that would be direct evidence that it
7 was raining.

8 Circumstantial evidence is simply a chain of
9 circumstances that indirectly proves a fact. If someone
10 walked into the courtroom wearing a raincoat covered with
11 drops of water and carrying a wet umbrella, that would be
12 circumstantial evidence from which you could conclude that it
13 was raining.

14 It's your job to decide how much weight to give the
15 direct and circumstantial evidence. The law makes no
16 distinction between the weight that you should give to either
17 one, nor does the law say that one is any better evidence than
18 the other. You should consider all the evidence, both direct
19 and circumstantial, and give it whatever weight you believe it
20 deserves.

21 As to credibility of witnesses. Another part of your job
22 as jurors is to decide how credible or believable each witness
23 was. This is your job, not mine or anyone else's. It's up to
24 you to decide if a witness's testimony was believable, and how
25 much weight you think it deserves. You're free to believe

1 everything that a witness said, or only part of it, or none of
2 it at all. But you should act reasonably and carefully in
3 making these decisions.

4 Let me suggest some ways for you to consider in
5 evaluating each witness's testimony. Ask yourself if the
6 witness was able to clearly see or hear the events. Sometimes
7 even an honest witness may not have been able to see or hear
8 what was happening and may make a mistake.

9 Ask yourself how good the witness's memory seemed to be.
10 Did the witness seem able to accurately remember what
11 happened.

12 Ask yourself if there was anything else that may have
13 interfered with the witness's ability to perceive or remember
14 the events.

15 Ask yourself how the witness acted while testifying. Did
16 the witness appear honest, or did the witness appear to be
17 lying.

18 Ask yourself if the witness had any relationship to the
19 government or the defendant, or anything to gain or lose from
20 the case that might influence the witness's testimony.

21 Ask yourself if the witness had any bias or prejudice or
22 reason for testifying that might cause the witness to lie or
23 to slant the testimony in favor of one side or of the other.

24 Ask yourself if the witness testified inconsistently
25 while on the witness stand, or if the witness said or did

1 something, or failed to say or do something, at any other time
2 that is inconsistent with what the witness said while
3 testifying.

4 If you believe that the witness was inconsistent, ask
5 yourself if this makes the witness's testimony less
6 believable. Sometimes it may; other times it may not.

7 Consider whether the inconsistency was about something
8 important or about some unimportant detail. Ask yourself if
9 it seemed like an innocent mistake, or if it seemed
10 deliberate.

11 And ask yourself how believable the witness's testimony
12 was in light of all the other evidence. Was the witness's
13 testimony supported or contradicted by evidence that you find
14 believable.

15 If you believe that a witness's testimony was
16 contradicted by other evidence, remember that people sometimes
17 forget things, and even two honest people who witness the same
18 event may not describe it in exactly the same way.

19 These are only some of the things that you may consider
20 in deciding how believable each witness was. You may also
21 consider other things that you think shed some light on the
22 witness's believability.

23 Use your common sense and your everyday experience in
24 dealing with other people, and then decide what testimony you
25 believe and how much weight you think it deserves.

1 As to number of witnesses. Sometimes jurors wonder if
2 the number of witnesses who testified makes any difference.
3 Do not make any decisions based on the number of witnesses who
4 testified.

5 What is important is how believable the witnesses were,
6 and how much weight you think their testimony deserves.
7 Concentrate on that, not the numbers, and keep in mind that
8 the defendant is not obligated to present any evidence at all.

9 The government have agreed or stipulated to certain
10 facts, therefore, when I instruct you that a fact has been
11 stipulated to or agreed upon, you must accept the fact as
12 proved.

13 As to the lawyers' objections. The lawyers for both
14 sides objected to some of the things that were said or done
15 during the trial. Do not hold that against either side. The
16 lawyers have a duty to object whenever they think that
17 something's not permitted by the rules of evidence. Those
18 rules are designed to make sure that both sides receive a fair
19 trial.

20 And do not interpret my rulings on their objections as
21 any indication of how I think the case should be decided. My
22 rulings were based on the rules of evidence, not on how I feel
23 about the case. Remember that your decision must be based
24 only on the evidence that you saw and heard here in court.

25 Defining the crimes. I've now concluded the part of my

1 instructions in explaining your rules and the general rules
2 that apply in every criminal case.

3 In a moment, I will explain the elements of the crimes
4 that the defendant is accused of committing. But before I do
5 that, I want to emphasize that the defendant is only on trial
6 for the particular crimes charged in the indictment. Your job
7 is limited to deciding whether the government has proved the
8 crimes charged in the indictment.

9 Also, keep in mind that whether anyone else might have
10 also been involved or should be prosecuted for any of the
11 crimes is not a proper matter for you to consider. The
12 possible involvement of others is no defense to a criminal
13 charge. Your job is to decide if the government has proved
14 this defendant, Yanjun Xu, guilty or not.

15 Now as to separate considerations when multiple charges.
16 The defendant has been charged with more than one offense.
17 The number of charges is no evidence of guilt, and this should
18 not influence your decision in any way. It's your duty to
19 separately consider the evidence that relates to each charge,
20 and to return a separate verdict for each one

21 For each charge, you must decide whether the government
22 has presented proof beyond a reasonable doubt that the
23 defendant is guilty of that particular charge.

24 Your decision on one charge, whether it's guilty or not
25 guilty, should not influence your decision on any of the other

1 charges.

2 All right. Here's an overview.

3 Counts 1 and 2 of the indictment charge the defendant
4 with two distinct counts of conspiracy; specifically,
5 conspiracy to commit economic espionage, Count 1; and
6 conspiracy to commit trade secret theft, Count 2.

7 Counts 3 and 4 of the indictment charge the defendant
8 with two distinct counts of attempt; specifically, attempt to
9 commit economic espionage, Count 3; and attempt to commit
10 trade secret theft, Count 4.

11 The defendant is not charged with actually committing the
12 crimes of economic espionage and/or trade secret theft, but
13 it's also a crime to conspire or attempt to commit economic
14 espionage and trade secret theft.

15 However, before I instruct you on the elements of
16 conspiracy and attempt, you must understand the underlying
17 crimes of economic espionage and trade secret theft so that
18 you can go on to consider whether the government has proved
19 beyond a reasonable doubt that the defendant committed the
20 charged crimes of conspiracy or attempt.

21 So I'll start by explaining the crimes of economic
22 espionage and trade secret theft. Again, these are not the
23 crimes that the defendant is charged with committing. You
24 merely need to know what they are so that you can fully
25 deliberate as to the actual charged offenses, which I will

1 explain momentarily.

2 As to economic espionage and trade theft secret. First,
3 economic espionage. A person commits the crime of economic
4 espionage if he intending or knowing that the offense will
5 benefit any foreign government, foreign instrumentality or
6 foreign agent, knowingly does any of the following: Steals,
7 or without authorization appropriates, takes, carries away, or
8 conceals, or by fraud, artifice, or deception obtains a trade
9 secret; or without authorization copies, duplicates, sketches,
10 draws, photographs, downloads, uploads, alters, destroys,
11 photocopies, replicates, transmits, delivers, sends, mails,
12 communicates, or conveys a trade secret; or receives, buys, or
13 possesses a trade secret, knowing the same to have been stolen
14 or appropriated, obtained, or converted without authorization.

15 As to trade secret theft. A person commits the crime of
16 trade secret theft if he, with intent to convert a trade
17 secret, it is related to a product or service used or intended
18 for use in interstate or foreign commerce to the economic
19 benefit of anyone other than the owner thereof, and intending
20 or knowing that the offense will injure any owner of that
21 trade secret knowingly does any of the following:

22 A, steals, or without authorization appropriates, takes,
23 carries away, or conceals, or by fraud, artifice, or deception
24 obtains such information.

25 Or B, without authorization copies, duplicates, sketches,

1 draws, photographs, downloads, uploads, alters, destroys,
2 photocopies, replicates, transmits, delivers, sends, mails,
3 communicates, or conveys such information.

4 Or C, receives, buys, or possesses such information,
5 knowing the same to have been stolen or appropriated,
6 obtained, or converted without authorization.

7 Okay. Charged offenses. Now that I have explained the
8 crimes of economic espionage and trade secret theft, I can
9 tell you about the actual charges the defendant faces.

10 Again, the defendant is not charged with actually
11 committing the crimes of economic espionage and trade secret
12 theft, but it is also a crime to conspire or attempt to commit
13 economic espionage and/or trade secret theft. That is what
14 the indictment charges the defendant with here, and that is
15 what the government must prove, crimes of conspiracy and
16 attempt.

17 Specifically, the indictment charges the defendant with
18 four counts:

19 One, conspiracy to commit economic espionage.

20 Two, conspiracy to commit trade secret theft.

21 Three, attempt to commit economic espionage.

22 And, four, attempt to commit trade secret theft.

23 I will now give you the elements of each of these four
24 charged counts. You must consider each of the four charged
25 counts and determine whether or not the government has met its

1 burden to prove every element of that count beyond a
2 reasonable doubt.

3 First, I will give you a brief overview and some rules
4 regarding the crime of conspiracy, and I will read to you the
5 allegations and the elements for the two conspiracy counts,
6 Counts 1 and 2. Then I'll give you further instructions that
7 are relevant to Counts 1 and 2.

8 After that, I'll give you a brief overview regarding the
9 crime of attempt, and I will read to you the allegations and
10 the elements of the two attempt counts, Counts 3 and 4. I
11 will then give you further instructions that are relevant to
12 Counts 3 and 4.

13 Finally, I will provide you with some general
14 instructions and explain some relevant terms that are
15 applicable to all four counts.

16 I've chosen to state these at the end so as to avoid
17 repeating them for you over and over but, bear in mind, you'll
18 need to refer to these instructions as well as you deliberate.

19 If you decide that the government has met its burden to
20 prove each of the elements of a particular count beyond a
21 reasonable doubt, then you must render a verdict of guilty as
22 to that particular count.

23 If you decide that the government has not proved each of
24 the elements of a particular count beyond a reasonable doubt,
25 then you must render a verdict of not guilty as to that

1 particular count.

2 As to conspiracy generally. Conspiracy is a kind of
3 criminal partnership. It's a crime for two or more persons to
4 conspire or agree to commit a criminal act and to perform an
5 overt act to advance that conspiracy, even if they never
6 actually achieve their ultimate goal.

7 Now, some of the people who may have been involved in
8 these events are not on trial. This does not matter. There's
9 no requirement that all members of a conspiracy be charged and
10 prosecuted or tried together in one proceeding.

11 Also, there's no requirement that the names of the other
12 conspirators be known. An indictment can charge a defendant
13 with a conspiracy involving people whose names are not known,
14 as long as the government can prove that the defendant
15 conspired with one or more of them. Whether they are named or
16 not named does not matter.

17 The defendant is charged with two counts of conspiracy in
18 this case. One conspiracy count is charged in Count 1, the
19 other is charged in Count 2. The charges are distinct
20 offenses and you must consider each of them carefully.

21 As to Count 1, conspiracy to commit economic espionage.
22 Count 1 of the indictment charges the defendant, Yanjun Xu,
23 with conspiracy to commit economic espionage, in violation of
24 federal law.

25 As to the allegations relating to the object of the

1 conspiracy, the indictment alleges that from in or about 2013,
2 and continuing until at least April 1, 2018, in the Southern
3 District of Ohio and elsewhere, the defendant, Yanjun Xu, aka
4 Xu Yanjun, aka Qu Hui, aka Zhang Hui, and coconspirator Chen
5 Feng, along with others known and unknown, did knowingly
6 combine, conspire, confederate or agree to, (a), steal, or
7 without authorization appropriate, take, carry away, or
8 conceal, or by fraud, artifice, or deception, obtain a trade
9 secret; or without authorization copy, duplicate, download,
10 upload, photocopy, replicate, transmit, deliver, send, mail,
11 communicate, or convey a trade secret; or, (c), receive, buy,
12 or possess a trade secret, knowing the same to have been
13 stolen or appropriated, obtained, or converted without
14 authorization, and did so intending and knowing that the
15 offense will benefit the Chinese government or any agent,
16 agency, ministry, bureau, or institution within its control,
17 namely Yanjun Xu, other MSS officers, NUAA, and the People's
18 Republic of China.

19 As to the elements, conspiracy to commit economic
20 espionage. For you to find the defendant guilty of the
21 offense of conspiracy to commit economic espionage, you must
22 find that the government has proved each and every one of the
23 following elements beyond a reasonable doubt:

24 First, that from in or about 2013, and continuing at
25 least until April 1, 2018, two or more persons conspired, or

1 agreed, to commit the crime of economic espionage. See
2 page 16 in the allegations above.

3 Second, that the defendant knowingly and voluntarily
4 joined the conspiracy.

5 And, third, that a member of the conspiracy performed at
6 least one overt act for the purpose of advancing or helping
7 the conspiracy.

8 If you're convinced that the government has proved all of
9 these elements beyond a reasonable doubt, say so by returning
10 a guilty verdict on Count 1.

11 If you have a reasonable doubt about any one of these
12 elements, then you must find the defendant not guilty of
13 Count 1.

14 As to Count 2, conspiracy to commit trade secret theft.
15 Count 2 charges the defendant, Yanjun Xu, with conspiracy to
16 commit trade secret theft, in violation of federal law.

17 As to the allegations relating to the object of the
18 conspiracy, the indictment states that from in or about 2013,
19 and continuing to at least April 1, 2018, in the Southern
20 District of Ohio and elsewhere, the defendant, Yanjun Xu, the
21 defendant, also known as Xu Yanjun, Qu Hui, Zhang Hui, and
22 coconspirator Chen Feng, along with others known and unknown,
23 did knowingly combine, conspire, confederate, or agree to,
24 (a), steal, or without authorization appropriate, take, carry
25 away, or conceal, or by fraud, artifice, or deception obtain a

1 trade secret; or (b), without authorization copy, duplicate,
2 download, upload, photocopy, replicate, transmit, deliver,
3 send, mail, communicate, or convey a trade secret; or (c),
4 receive, buy, or possess a trade secret, knowing the same to
5 have been stolen or appropriated, obtained, or converted
6 without authorization, and did so with intent to convert a
7 trade secret to the economic benefit of anyone other than the
8 owner of the trade secret, and intending and knowing that the
9 offense will injure any owner of that trade secret.

10 As to the elements. For you to find the defendant guilty
11 of the offense of conspiracy to commit trade secret of theft,
12 you must find that the government has proved each and every
13 one of the following elements beyond a reasonable doubt.

14 First, that from in or about 2013, and continuing until
15 at least April 1, 2018, two or more persons conspired, or
16 agreed, to commit the offense of trade secret theft. See
17 page 16 in the allegations above.

18 Second, that the defendant knowingly and voluntarily
19 joined the conspiracy.

20 And, third, that a member of the conspiracy performed at
21 least one overt act with a purpose of advancing or helping the
22 conspiracy.

23 If you are convinced that the government has proved all
24 of these elements beyond a reasonable doubt, say so by
25 returning a guilty verdict on Count 2.

1 If you have a reasonable doubt about any one of these
2 elements, then you must find the defendant not guilty of
3 Count 2.

4 Counts 1 and 2, general instructions and relative terms.
5 Now I will provide you with some instructions on the law and
6 explain some of the terms relevant to Counts 1 and 2.

7 One, proof regarding trade secrets. For purposes of
8 Counts 1 and 2, it is not necessary for the government to
9 prove that any trade secrets were actually, one, stolen,
10 without authorization appropriated, taken, carried away, or
11 concealed, or obtained by fraud, artifice, or deception.

12 Two, copied, duplicated, or sketched, drawn, altered,
13 photocopied, replicated, transmitted, delivered, sent,
14 communicated, or conveyed without authorization.

15 Or three, received, bought, or possessed without
16 authorization.

17 This is because the crime of conspiracy is complete upon
18 two or more persons entering into an agreement to violate the
19 law, and any of the -- and any member of the conspiracy
20 performing an overt act to advance the conspiracy.

21 For purposes of Counts 1 and 2, the government must only
22 prove that the conspiracy intended to target information that
23 the conspirators believed to be trade secrets. Whether or not
24 the targeted information actually was a trade secret is not
25 relevant.

1 Two, as to agreement, with regard to the first element, a
2 criminal agreement. The government must prove that two or
3 more persons conspired or agreed to cooperate with each other
4 to commit the crime of economic espionage.

5 This does not require proof of any formal agreement,
6 written or spoken, nor does this require proof that everyone
7 involved agreed on all the details, but proof that people
8 simply met together from time to time and talked about common
9 interests or engaged in similar conduct is not enough to
10 establish a criminal agreement.

11 These are things that you may consider in deciding
12 whether the government has proved an agreement, but without
13 more, they're not enough.

14 What the government must prove is that there was a mutual
15 understanding, either spoken or unspoken, between two or more
16 people, to cooperate with each other to commit the crime of
17 economic espionage. This is essential.

18 What the government must prove is that there was a mutual
19 understanding. I believe I read that to you.

20 D, an agreement must be made -- can be proved indirectly,
21 by facts and circumstances which lead to a conclusion that an
22 agreement existed. But it's up to the government to convince
23 you that such facts and circumstances existed in this
24 particular case.

25 As to three, the defendant's connection to the

1 conspiracy. If you are convinced that there was a criminal
2 agreement, then you must decide whether the government has
3 proved that the defendant knowingly and voluntarily joined
4 that agreement.

5 To convict a defendant, the government must prove that
6 the defendant knew the conspiracy's main purpose, and that he
7 voluntarily joined it intending to help advance or achieve its
8 goals.

9 This does not require proof that a defendant knew
10 everything about the conspiracy, or everyone else involved, or
11 that he was a member of it from the very beginning. Nor does
12 it require proof that a defendant played a major role in the
13 conspiracy, or that his connection to it was substantial. A
14 slight role or connection may be enough.

15 But proof that a defendant simply knew about a
16 conspiracy, or was present at times, or associated with
17 members of the group, is not enough, even if he approved of
18 what was happening or did not object to it.

19 Similarly, just because a defendant may have done
20 something that happened to help a conspiracy does not
21 necessarily make him a conspirator. These are things that you
22 may consider in deciding whether the government has proved
23 that a defendant joined a conspiracy, but without more, they
24 are not enough.

25 A defendant's knowledge can be proved indirectly by facts

1 and circumstances which lead to a conclusion that he knew the
2 conspiracy's main purpose, but it's up to the government to
3 convince you that such facts and circumstances existed in this
4 case.

5 As to overt acts. The third element that the government
6 must prove is that a member of the conspiracy performed an
7 overt act for the purpose of advancing or helping the
8 conspiracy.

9 The government alleges a number of overt acts. However,
10 the government does not have to prove that all these acts were
11 committed. The government does not have to prove that any of
12 these acts were themselves illegal, but the government must
13 prove beyond a reasonable doubt that at least one of these
14 acts was committed by a member of the conspiracy, and that it
15 was committed for the purpose of advancing or helping the
16 conspiracy. This is essential.

17 I will now provide you a list of the overt acts that the
18 government has alleged. Bear in mind that these are merely
19 allegations for your consideration and relate to the third
20 elements of Counts 1 and 2.

21 In furtherance of the conspiracy and to achieve the
22 objects and purposes thereof, Defendant Xu and others
23 committed and caused to be committed the following overt acts,
24 among others, in the Southern District of Ohio and elsewhere:

25 A, on or about December 26, 2013, the defendant discussed

1 an upcoming expert exchange with an MSS colleague. These are
2 allegations. Within the messages, defendant stated that "the
3 customer doesn't know our identities. I approached him with
4 the identity of Qu Hui, the deputy secretary-general of
5 Science and Technology Association."

6 The defendant's colleague acknowledged it and, quote, got
7 it. I'll make sure everybody here knows you're from the
8 Nanjing Science and Technology Association, end quote.

9 B, on or about April 22, 2014, defendant sent a message
10 to an MSS colleague regarding another upcoming, quote,
11 exchange, unquote, with an expert. The defendant reminded the
12 colleague of two things. Quote, one, the expert does not know
13 my true identity. I approached him with the same name under
14 Jiangsu Science and Technology Association; two, do not
15 mention about the materials, end quote.

16 C, beginning in at least by March 2017, unindicted
17 coconspirators Chen Feng began corresponding by email with
18 David Zheng, Z-h-e-n-g, employed by GE Aviation as an engineer
19 since 2012.

20 Unindicted coconspirator Chen Feng solicited Zheng to
21 come to NUAA in China for a, quote, exchange, end quote, based
22 on Zheng's engineering experience at GE Aviation. NUAA,
23 through unindicted coconspirator Chen Feng, offered to pay for
24 Zheng's travel expenses.

25 D, on May 10, 2017, unindicted coconspirator Chen Feng

1 emailed Zheng that the, quote, Institute of Energy and Power,
2 end quote, had proposed that Zheng give a report on
3 GE Aviation's signature material design and manufacturing
4 technology.

5 Unindicted coconspirator Chen Feng wanted Zheng to focus
6 on highly technical topics, including the latest developments
7 in the application of GE Aviation's signature material used in
8 aero engines, as well as engine structure design analysis
9 technology and manufacturing technology development.

10 E, on May 15, 2017, in preparation for the trip to China
11 to present at NUAA, a message was sent to Zheng from one of
12 defendant's email accounts, but the email was signed using the
13 name of unindicted coconspirator, Chen Feng.

14 F, while Zheng was in China, unindicted coconspirator
15 Chen Feng introduced Zheng to the defendant. During this
16 meeting, the defendant introduced himself using his alias, Qu
17 Hui, and claimed to be from JAST in China.

18 Defendant gave a business card to Zheng that contained
19 his alias, Qu Hui, and contact information associated with
20 JAST, a cover affiliation for defendant.

21 G, on June 2, 2017, at the invitation and direction of
22 defendant and unindicted coconspirator Chen Feng, Zheng gave a
23 presentation at NUAA in China, which included details
24 regarding engines that were designed and produced by
25 GE Aviation.

1 H, defendant had meals with Zheng both before and after
2 the NUAA presentation.

3 I, defendant and others caused Zheng to be paid \$3,500 in
4 U.S. currency for the presentation and as reimbursement for
5 expenses incurred during Zheng's visit to Nanjing; e.g. meals
6 and hotel expenses.

7 J, after the trip to China, defendant continued to
8 communicate with Zheng. In fact, defendant invited Zheng to
9 return to NUAA the following year.

10 K, on November 21, 2017, unindicted coconspirator Chen
11 Feng expressed an interest in having Zheng travel to China to
12 exchange ideas and instruct them again at NUAA.

13 Unindicted coconspirator Chen Feng informed Zheng that he
14 had spoken with Qu Hui, defendant, from JAST, and that Qu Hui
15 would be able to help with travel expenses and handle the
16 details of the, quote, exchange, end quote.

17 L, on or about January 8, 2018, defendant wrote to Zheng,
18 quote, I will touch base with the scientific research
19 department here to see what technology is desired. I will let
20 you know what to prepare. For your end, please prepare the
21 plane ticket and date as soon as possible, end quote.

22 M, on or about January 23, 2018, defendant wrote to
23 Zheng, quote, okay. Try your best to collect and we can talk
24 by then. Domestically, there is more focused on the system
25 code, end quote. Defendant later elaborated that the

1 information he wanted pertained to, quote, system
2 specification, design process, end quote, which is the
3 application of research data to engine production.

4 Defendant provided an email address for Zheng to use to
5 send the requested information. When Zheng informed defendant
6 that the email may be blocked if Zheng used the company
7 computer, defendant responded, quote, it might be
8 inappropriate to send directly from the company, right? end
9 quote.

10 N, on or about February 3, 2018, defendant caused Zheng
11 to send an excerpt of presentation from GE Aviation pertaining
12 to, quote, containment analysis, end quote, for a fan blade
13 encasement.

14 The document contained a label warning that the
15 presentation contained proprietary information from
16 GE Aviation.

17 O, on February 4, 2018, defendant wrote to Zheng and
18 acknowledged receiving the document from GE Aviation
19 pertaining to the, quote, containment analysis, end quote.
20 Defendant stated that he wanted Zheng to spend time talking
21 with the experts in China for a, quote, more precise
22 connection, end quote, and proposed a meeting date.

23 P, in the same message, defendant sent Zheng a list of
24 technical topics pertaining to composite materials in the
25 manufacture of fan blades and fan blade encasements that the

1 defendant's organization was being interested in, after being
2 sent information that contained GE Aviation's proprietary
3 warning label.

4 Specifically, defendant wrote the, quote, attached file
5 is some domestic requirements that I know of. Can you take a
6 look and let me know if you're familiar with these, end quote.

7 The attached list stated the following: Regarding the
8 current development situation and future development situation
9 of foreign countries' structural materials for fan rotor
10 blades made from composite materials. A question followed.

11 Regarding the design criteria for the foreign countries'
12 composite material rotor fan blade, stator fan blade, and fan
13 casing. A list of questions followed.

14 Q, when Zheng directly advised defendant that some of the
15 posed questions involved GE Aviation's commercial secrets,
16 defendant replied they would discuss it when they met in
17 person.

18 R, in February 2018, Xu also began discussing with Zheng
19 the possibility of meeting in Europe during one of Zheng's
20 business trips.

21 S, on or about February 5, 2018, Xu asked Zheng to create
22 and sort a directory of the files on Zheng 's computer
23 relating to the files of GE Aviation.

24 Defendant asked Zheng to send a copy of the file
25 directory to Zheng's company-issued computer. Defendant sent

1 specific directions for how Zheng should sort and save such a
2 directory.

3 T, on or about February 14, 2018, defendant caused Zheng
4 to send a computer file directly from Zheng's company-issued
5 computer to defendant.

6 U, on February 28, 2018, defendant requested to speak
7 with Zheng by telephone. During the phone call, defendant
8 referred to the file directory that Zheng sent at defendant's
9 request. Defendant told Zheng that, quote, they, end quote,
10 had looked at it and it is, quote, pretty good stuff, end
11 quote.

12 Defendant asked if Zheng would be able to bring it with
13 Zheng when Zheng traveled to Europe for their meeting. Xu
14 further stated, quote, the computer you will bring along is
15 the company computer, right? end quote.

16 Defendant also asked if the material Zheng intended to
17 bring could be exported out of the computer. When Zheng
18 informed defendant that it could be exported on to a portable
19 hard drive, defendant replied, quote, good, good, good, end
20 quote.

21 Defendant asked, quote, so, if possible, we will look
22 over the stuff. Can we do that? end quote. After Zheng
23 agreed to defendant's request, the defendant stated, quote, do
24 you understand? Carry the stuff along, end quote.

25 V, later in the conversation, on February 28, 2018,

1 defendant told Zheng that what Zheng had sent so far was,
2 quote, good enough, end quote.

3 The defendant continued, quote, if we need something new
4 later, we can talk about that in person when we meet. What do
5 you think? All right. We really don't need to rush to do
6 everything in one time because if we're going to do business
7 together, this won't be the last time, right? end quote.

8 W, on March 4, 2018, Zheng informed defendant that some
9 of the documents identified on the company directory were
10 generated from a specific software and, as a result, some
11 documents could only be viewed and backed up when connected to
12 GE Aviation's network.

13 In response, defendant asked, quote, does that mean I
14 will not be able to view these documents after I bring them
15 back? end quote.

16 Zheng replied that Zheng did not know because Zheng had
17 never tried to open the files while in China.

18 X, on March 5, 2018, defendant sent Zheng a message
19 asking, quote, regarding the document directory you sent last
20 time, is it possible to dump it to a portable hard drive or
21 USB drive from work computer in advance? end quote.

22 Y, on March 10, 2018, defendant sent Zheng a message
23 stating, quote, since there's still time, download more data
24 and bring them back. Anything design related would work, end
25 quote.

1 On or about April 1, 2018, defendant traveled to the
2 Kingdom of Belgium to meet Zheng for the purpose of discussing
3 and receiving the sensitive information he had requested.

4 Those are the overt acts alleged by the government. The
5 fact that I read them out loud doesn't change the fact that
6 they are allegations.

7 Now, as to attempt, generally. Attempting to commit
8 either economic espionage or a trade secret theft is a crime
9 under the law.

10 The defendant is charged with two counts of attempt in
11 this case. One attempt count is charged in Count 3, attempt
12 to commit economic espionage, and the other is charged in
13 Count 4, attempt to commit trade secret theft.

14 The charges are distinct offenses and you must consider
15 each of them carefully.

16 Count 3, attempt to commit economic espionage. As to the
17 allegation, the indictment alleges that from in or about
18 May 2017, and continuing to at least April 1, 2018, in the
19 Southern District of Ohio and elsewhere, the defendant, Yanjun
20 Xu, a/k/a Xu Yanjun, a/k/a Qu Hui, a/k/a Zhang Hui,

21 A, did knowingly attempt to steal or without
22 authorization appropriate, take, carry away, or conceal, or by
23 fraud, artifice, or deception, obtain trade secret information
24 owned by GE Aviation; or

25 B, did so intending and knowing that the offense will

1 benefit the Chinese government and/or any agent, agency,
2 ministry, bureau, or institution within its control, namely
3 Yanjun Xu, other MSS officers, NUAA, and the People's Republic
4 of China.

5 As to the elements. For you to find the defendant guilty
6 of the attempting to commit economic espionage, you must find
7 that the government has proved each and every one of the
8 following elements beyond a reasonable doubt.

9 First, that from in or about May 2017, and continuing to
10 at least April 1, 2018, the defendant, Yanjun Xu, intended to
11 commit the crime of economic espionage. See page 16 and the
12 allegations above.

13 And, second, that the defendant performed some overt act
14 that was a substantial step towards committing the crime of
15 economic espionage. See page 16 and the allegations above.

16 If you are convinced that the government has proved all
17 of these elements beyond a reasonable doubt, say so by
18 returning a guilty verdict on Count 3.

19 If you have a reasonable doubt about any one of these
20 elements, then you must find the defendant not guilty of
21 Count 3.

22 As to Count 4, attempt to commit trade secret theft. As
23 to the allegations, the indictment says, alleges that from in
24 or about May 2017, and continuing to at least April 1, 2018,
25 in the Southern District of Ohio and elsewhere, the defendant

1 did knowingly attempt to steal, or without authorization
2 appropriate, take, carry away, or conceal, or by fraud,
3 artifice, or deception, obtain trade secret information owned
4 by GE Aviation, which was related to or included in a product
5 or service used in or intended for use in interstate and
6 foreign commerce; and

7 B, did so with the intent to convert a trade secret to
8 the economic benefit of someone other than GE Aviation, and
9 intending and knowing that the offense would injure
10 GE Aviation.

11 As to the elements of Count 4. For you to find the
12 defendant guilty of the offense of attempting to commit trade
13 secret theft, you must find that the government has proved
14 each and every one of the following elements beyond a
15 reasonable doubt.

16 First, that from in or about May 2017, and continuing at
17 least until April 1, 2018, the defendant intended to commit
18 the crime of trade secret theft. See page 16 and the
19 allegations above.

20 And, second, that the defendant performed some overt act
21 that was a substantial step toward committing the crime of
22 trade secret theft. See page 16 and the allegations above.

23 If you're convinced that the government has proved all of
24 these elements beyond a reasonable doubt, say so by returning
25 a verdict of guilty on Count 4. If you have a reasonable

1 doubt about any one of these elements, then you must find the
2 defendant not guilty of Count 4.

3 Now as to Counts 3 and 4, general instructions and
4 relevant terms. Let me explain some of the terms and provide
5 you with some instructions relevant to Counts 3 and 4.

6 Proof regarding trade secrets. For purposes of Counts 3
7 and 4, it's not necessary for the government to prove that any
8 trade secrets were actually stolen, without authorization
9 appropriated, taken, carried away, or concealed, or obtained
10 by fraud, or artifice, or deception.

11 Two, copied, duplicated, sketched, drawn, altered,
12 photocopied, replicated, transmitted, delivered, sent,
13 communicated, or conveyed without authorization, or three,
14 received, bought, or possessed without authorization.

15 This is because the crime of attempt is complete upon the
16 defendant intending to violate the law and performing an overt
17 act that qualifies as a substantial step toward committing the
18 crime.

19 B, for purposes of Counts 3 and 4, the government must
20 only prove that the defendant intended to target information
21 that the defendant believed to be trade secrets. Whether or
22 not the targeted information was actually a trade secret is
23 not relevant.

24 Two, as to substantial step. The second element requires
25 the government to prove that the defendant performed an overt

1 act that was a substantial step toward committing the crime.

2 B, merely preparing to commit a crime is not a
3 substantial step. The defendant's conduct must go beyond mere
4 preparation, and must strongly confirm that he intended to
5 commit economic espionage for Count 3, or trade secret theft
6 for Count 4.

7 But the government does not have to prove that the
8 defendant did everything except the last act necessary to
9 complete the crime. A substantial step beyond mere
10 preparation is enough.

11 As to overt acts. The government alleges a number of
12 overt acts. The government does not have to prove that all
13 these acts were committed, and the government does not have to
14 prove that any of the acts were themselves illegal.

15 But the government must prove beyond a reasonable doubt
16 that the defendant committed at least one of these acts, and
17 that it was a substantial step toward committing the crime.
18 This is essential.

19 In determining whether the defendant performed an overt
20 act for purposes of Counts 3 and 4, please see the list which
21 I read and is provided on pages 25 to 29 of these
22 instructions, but exclude the acts listed under (c) and (d) of
23 the list.

24 I decline to read you aloud pages 25 to 29 again.

25 As to all counts. General instructions and relevant

1 terms. Trade secret. The term trade secret means all forms
2 and types of financial, business, scientific, technical,
3 economic, or engineering information, including patterns,
4 plans, compilations, program devices, formulas, designs,
5 prototypes, methods, techniques, processes, procedures,
6 programs, or codes, whether tangible or intangible, and
7 whether or how stored, compiled, or memorialized physically,
8 electronically, graphically, photographically, or in writing
9 if,

10 A, the owner thereof has taken reasonable means to keep
11 such information secret; and,

12 B, the information derives independent economic value,
13 actual or potential, from not being generally known to, and
14 not being readily ascertainable through proper means by
15 another person who can obtain economic value from the
16 disclosure or use of the information.

17 As to general instructions. One, the dates of the
18 alleged offenses. The indictments charge that Counts 1 and 2
19 happened, quote, in or about 2013, and continuing to at least
20 April 1, 2018, end quote.

21 And Counts 3 and 4 happened, quote, in or about May 2017,
22 and continuing to at least April 1, 2018, end quote.

23 The government does not have to prove that the crime
24 happened on those exact dates. But as to each count, the
25 government must prove that the crime happened reasonably close

1 to the dates alleged.

2 Two, inferring required mental state. Intent. I want to
3 explain something about proving a defendant's state of mind.

4 Ordinarily, there is no way that a defendant's state of
5 mind can be proved directly because no one can read another
6 person's mind and tell what that person is thinking.

7 But a defendant's state of mind can be proved indirectly
8 from the surrounding circumstances. This includes things like
9 what the defendant said or did not say, what the defendant did
10 or did not do, how the defendant acted or did not act, and any
11 other facts or circumstances in evidence that show what is in
12 the defendant's mind.

13 You may also consider the natural and probable results of
14 any acts that the defendant knowingly did or did not do, and
15 whether it's reasonable to conclude that the defendant
16 intended those results.

17 This, of course, is all for you to decide.

18 As to venue. There's one final element that the
19 government has to prove; that is, the government must also
20 prove, as to each individual count, that all or part of each
21 alleged offense occurred within the Southern District of Ohio.
22 This is referred to as venue.

23 As to venue, the government and the defense agree and
24 stipulate that the proper venue for all charges is here in the
25 Southern District of Ohio.

1 This concludes the part of my instructions in explaining
2 the elements of the offense.

3 Next I'll explain some rules you must use in considering
4 some of the testimony and evidence.

5 Defendant's right not to testify. Defendant has an
6 absolute right not to testify. The fact that the defendant
7 did not testify cannot be considered by you in any way. Do
8 not even discuss it in your deliberations.

9 Remember that it's up to the government to prove the
10 defendant guilty beyond a reasonable doubt. It's not up to
11 the defendant to prove he's innocent.

12 As to law enforcement witnesses, the testimony of which
13 you heard. The fact that a witness may be employed as a
14 state, federal, or foreign law enforcement official does not
15 mean that his testimony is necessarily deserving of more or
16 less consideration, or greater or lesser weight than that of
17 an ordinary witness.

18 At the same time, it's quite legitimate for defense
19 counsel to try and attack the credibility of a law enforcement
20 witness on the grounds that his testimony may be colored by a
21 personal or professional interest in the outcome of the case.

22 It's your decision, after reviewing all the evidence,
23 whether to accept the testimony of the law enforcement witness
24 and to give to that testimony whatever weight, if any, you
25 find it deserves.

1 Now, as to opinion testimony. You heard the testimony of
2 James Mulvenon, Nick Kray, Rizwan Ramakwadala, and James
3 Olson, who testified as opinion witnesses.

4 You do not have to accept these witnesses' opinion. In
5 deciding how much weight to give their testimony, you should
6 consider the witness's qualifications and how he reached his
7 conclusions.

8 Also consider the other factors discussed in these
9 instructions for weighing the credibility of witnesses.

10 Remember that you alone decide how much of a witness's
11 testimony to believe or not to believe, and how much weight it
12 deserves.

13 Additionally, you are not to consider any opinion
14 testimony regarding the defendant's state of mind or his
15 intent. Therefore, as it relates to the testimony of James
16 Olson, to the extent that Mr. Olson specifically testified
17 that the defendant intended to steal trade secrets, you must
18 disregard those limited portions of his testimony.

19 This is because it is up to you and you alone to
20 determine whether the defendant intended to steal trade
21 secrets. See pages 39 and 40, General Instruction Number 2.

22 Witness testifying both to fact and opinions. You've
23 heard the testimony of various law enforcement witnesses, who
24 testified to both facts and opinions. Each of these types of
25 testimony should be given the proper weight.

1 As to the testimony on facts, consider the factors
2 discussed earlier in these instructions for weighing the
3 credibility of witnesses. See pages 8 and 9.

4 As to the testimony on opinions, you do not have to
5 accept the witnesses' opinions.

6 In deciding how much weight to give a witness's opinion,
7 you should consider the witness's qualifications and how he
8 reached his conclusions, along with the other factors
9 described and discussed in these instructions for weighing the
10 credibility of witnesses.

11 Remember that you alone decide how much of a witness's
12 testimony to believe and how much weight it deserves.

13 As to the testimony of cooperating witnesses. You've
14 heard the testimony of Arthur Gao. You also heard that he had
15 been convicted of an offense relating to the events that he
16 testified about, and you heard that he had not yet been
17 sentenced.

18 Mr. Gao's conviction was in another court, before a
19 different judge, involving different charges and different
20 prosecutors.

21 There was no evidence that Mr. Gao was promised any
22 benefit in exchange for his testimony. But during his
23 testimony, it was implied that he may have received some
24 degree of leniency in his sentence, in exchange for his
25 agreement to testify in this case.

1 Additionally, you heard the testimony of David Zheng.
2 You also heard that the government promised him he will not be
3 prosecuted in exchange for his cooperation in this case.

4 It is permissible for the government to make such
5 promises in exchange for a witness's cooperation. But you
6 should consider testimony of such cooperating witnesses with
7 more caution than the testimony of other witnesses.

8 Consider whether their testimony may have been influenced
9 by the government's promise not to prosecute the witness, or
10 the witness's own belief that he may have received some
11 benefit in exchange for his cooperation.

12 Do not convict the defendant based on the unsupported
13 testimony of such a witness, standing alone, unless you
14 believe his testimony beyond a reasonable doubt.

15 As to redaction. The Court's rules require that certain
16 information be redacted, covered up, from certain documents.
17 You should not draw any inferences from the fact that an
18 exhibit contains redactions.

19 As to foreign language evidence. During the course of
20 the trial, you heard the testimony of a witness who required
21 the use of a French interpreter.

22 Also during the course of the trial, the Court admitted
23 into evidence various exhibits that were originally in Chinese
24 Mandarin. For your benefit, those exhibits were translated
25 into English, and you were presented with both the Chinese

1 original and the English translations.

2 The parties have agreed that the English language
3 translations are accurate. You must therefore accept the
4 English translation of the evidence as accurate and must rely
5 solely on the English language translations when considering
6 the evidence.

7 As to secondary evidence summaries admitted into
8 evidence. During the trial you've seen summary evidence in
9 the form of a chart or similar material. This summary was
10 admitted into evidence, in addition to the testimony it
11 summarizes, because it may assist you in understanding the
12 evidence that has been presented.

13 But the summary itself is not evidence of the material it
14 summarizes, and it's only as valid and reliable as the
15 underlying testimony it summarizes.

16 There was a demonstrative chart. During the trial the
17 government presented a demonstrative chart, which is offered
18 to assist in the presentation and understanding of a witness's
19 testimony. This material itself is not itself evidence and
20 must not be considered as proof of any facts.

21 And now as to deliberation and verdict. I've concluded
22 the part of my instructions explaining the rules for
23 considering some of the testimony and evidence. Let me finish
24 up by explaining some things about your deliberations in the
25 jury room and your possible verdicts.

1 The first thing that you should do in the jury room is
2 choose someone to be your foreperson.

3 A foreperson's opinions and vote are not given greater
4 weight than any other juror. All jurors' votes are equal.

5 The foreperson will simply help to guide your
6 discussions, make sure everyone gets to participate fully, and
7 will speak for you here in the courtroom.

8 Once you start deliberating, do not talk to anyone; not
9 my staff, not me, not anyone, except for each other, about the
10 case.

11 If you have a question or message, you must write it down
12 on a piece of paper. The foreperson should sign it, and then
13 alert Ms. Santoro, who will come and retrieve the written
14 question from you all and will deliver it straight to me.

15 Ms. Santoro will show you how to call her from the jury
16 room.

17 Any questions or messages you have normally should be
18 sent to me through your foreperson.

19 Once I receive your written question or message, I will
20 respond as soon as I can. I likely will have to talk to the
21 lawyers about what you have asked, so it might take me some
22 time to get back to you.

23 In the meantime, please continue your deliberations while
24 you wait to hear back from me; if you're able to do so, do so.

25 One more thing about messages. Do not ever write down or

1 tell anyone, including me, how you stand on your votes.

2 For example, do not write down or tell anyone that you're
3 split six-six, eight-four, four-eight, or whatever your vote
4 happens to be. That should stay secret until you are fully
5 finished.

6 Experiments, research, investigation outside
7 communications. No. No. No. Remember that you must make
8 your decision based solely on the evidence that you saw and
9 heard here in court.

10 During your deliberations, you must not communicate with
11 or provide information to anyone by any means about this case.

12 You may not use any electronic device or media, such as a
13 telephone, cell phone, smartphone, iPhone, iPad, computer,
14 laptop, the internet, any internet service, any email service,
15 any texts or instant messaging service, any app, any internet
16 chat room, blog, or website.

17 All of this includes, but is not limited to, Google,
18 Twitter, Snapchat, Instagram, Facebook, or YouTube, to
19 communicate to anyone any information about this case, or to
20 conduct any research about this case until after I accept your
21 verdict.

22 In other words, you can't talk to anyone on the phone,
23 correspond with anyone, or electronically communicate with
24 anybody about this case, and you may not do any form of
25 outside research.

1 You can only discuss the case in the jury room with your
2 fellow jurors during deliberations, pursuant to my
3 instructions.

4 I expect you will inform me immediately if you become
5 aware of another juror's violation of these instructions.

6 The reason you are not permitted to conduct outside
7 research and to communicate with anyone other than each other
8 about the case is because it's important that you decide this
9 case based solely on the evidence presented in this courtroom.

10 Information available in reference materials, the news,
11 on the internet, or through social media might be wrong,
12 incomplete, inaccurate, or misleading.

13 You're only permitted to discuss the case with your
14 fellow jurors during deliberations, as they have seen and
15 heard the same evidence as you have.

16 In our judicial system, it is important that you are not
17 influenced by anything or anyone outside this courtroom.
18 Otherwise, your decision may be based on information known
19 only by you and not your fellow jurors or the parties in the
20 case.

21 This would unfairly and adversely impact the judicial
22 process.

23 A juror who violates these rules jeopardizes the fairness
24 of these proceedings and a mistrial could result, which would
25 require the entire trial process to start over.

1 Unanimous verdict. Your verdicts as to the defendant,
2 whether guilty or not guilty, must be unanimous on each of the
3 four counts.

4 To find the defendant guilty, every one of you must agree
5 that the government has overcome the presumption of innocence
6 with evidence that proves the defendant's guilt beyond a
7 reasonable doubt.

8 To find a defendant not guilty, every one of you must
9 agree that the government has failed to convince you beyond a
10 reasonable doubt.

11 Either way, guilty or not guilty, as to each of the four
12 counts, your verdict must be unanimous as to each count.

13 As to the duty to deliberate. Now that all the evidence
14 is in and after closing arguments, you will be sent to the
15 jury room and begin to be free to talk about the case.

16 In fact, it's your duty to talk with each other about the
17 evidence, and to make every reasonable effort you can to reach
18 a unanimous agreement. Talk with each other. Listen
19 carefully and respectfully to each other's views. Keep an
20 open mind as you listen to what your fellow jurors have to
21 say. Try your best to work out any of your differences. Do
22 not hesitate to change your mind if you're convinced the other
23 jurors are right and that your original position is wrong.

24 But do not ever change your mind just because other
25 jurors see things differently or just to get the case over

1 with.

2 In the end, your vote must be exactly that, your own
3 vote. It's important for you to reach a unanimous agreement
4 but only if you all can do so honestly and in good conscience.

5 No one will be allowed to hear your discussions in the
6 jury room, and no record will be made of what you say. So you
7 should all feel free to speak your minds.

8 Listen carefully to what the other jurors have to say,
9 and then decide for yourself if the government has proved the
10 defendant guilty beyond a reasonable doubt or not.

11 As to punishment. If you decide that the government has
12 proved the defendant guilty, then it will be my job to
13 determine what the appropriate punishment should be. Deciding
14 what the punishment should be is my job, not yours. It would
15 violate your oaths as jurors to even consider a possible
16 punishment in deciding your verdict.

17 Your job is to look at the evidence and decide if the
18 government has proven or not proven the defendant guilty
19 beyond a reasonable doubt.

20 I've prepared verdict forms that you should use to record
21 your verdicts. There's one verdict form for each charge.

22 You have separately a copy of the verdict forms.
23 Straightforward verdict form. Count 1, guilty or not guilty.
24 Everybody signs it.

25 Count 2, guilty or not guilty. Everybody signs it, and

1 it's dated.

2 Count 3, guilty or not guilty. Everybody signs it, and
3 it's dated.

4 As to Count 4, same thing, guilty or not guilty, date it,
5 everybody signs it.

6 I want you all to leave the verdict forms in your chairs
7 when you leave. I'm not going to send a bunch of verdict
8 forms upstairs. We'll bring you one. It will be delivered to
9 the custody of the foreperson, and you all will work it
10 through in that regard.

11 You can take the jury instruction package of 56 pages
12 with you.

13 Remember that the defendant is only on trial for the
14 particular crimes charged in the indictment. Your job is
15 limited to deciding whether the government has proved or not
16 proved the crimes charged.

17 Now as to juror notes. Remember if you elected to take
18 notes during the trial, your notes should be used only as
19 memory aids. You shouldn't give your notes greater weight
20 than your independent recollection of the evidence.

21 You should rely upon your own independent recollection of
22 the evidence or lack of evidence, and you should not be unduly
23 influenced by the notes of other jurors.

24 Notes are not entitled to any more weight than the memory
25 or impression of each juror.

1 Whether you took notes or not, each of you must form and
2 express your own opinion as to the facts of the case.

3 Let me finish up by repeating something I said to you
4 earlier and I've said all along. Nothing that I have said or
5 done during this trial was meant to influence your decision in
6 any way. You decide for yourselves if the government has
7 proved or not proved the defendant guilty beyond a reasonable
8 doubt as to each of the four counts.

9 That concludes my jury instructions.

10 Now I'm going to change my mind and ask that you leave
11 your jury instruction packet and the verdict forms in your
12 chairs when you leave. We'll get them brought up to you in
13 due course.

14 Now you've been instructed in the law, and you sat
15 through my reading of the 56 pages, and you stayed awake and
16 paid careful attention.

17 You're going to get a break now for 15 minutes to sort of
18 clear your heads, and then we will come back with closing
19 arguments, unless we decide after 15 minutes to send you to
20 lunch.

21 So you've earned a break by listening to me drone on, but
22 it was important. You're going to have a written copy of it
23 all, and you've been paying attention during trial. Take a
24 break now for 15 minutes.

25 No discussion of the case among yourselves. You're

1 almost there. No discussion with anyone. No independent
2 research. Continue to keep an open mind.

3 You need to hear closing argument.

4 Out of respect for you, we'll rise as you leave for
5 15 minutes.

6 (Jury out at 11:09 a.m.)

7 THE COURT: The jury has left the room. The door is
8 closing. We're going to recess for 15 minutes. Lunch has not
9 been ordered until 12:45.

10 During the recess, if anyone wants to talk to my law
11 clerk about timing, feel free. I'll see you again in
12 15 minutes.

13 Court's in recess, unless there's anything further from
14 the government?

15 MR. MANGAN: Your Honor, there was one item, and I
16 regret we didn't mention it earlier. I know the defense
17 rested. We thought it might be advisable to have the
18 defendant on the record acknowledging that he waived his right
19 to testify.

20 THE COURT: Mr. Kohnen, can you facilitate that,
21 please?

22 MR. KOHNEN: I'm sorry, Your Honor?

23 THE COURT: Can you facilitate that, please?

24 MR. KOHNEN: Yes, Your Honor. In fact, we've already
25 spoken to Mr. Xu about that, and he's indicated to us that he

1 is not interested in testifying on his own behalf. I'm sure
2 that Mr. Xu would confirm that for the Court here if that's
3 your wish.

4 THE COURT: Is that right, Mr. Xu, you do not wish to
5 testify?

6 THE DEFENDANT: No.

7 THE COURT: Thank you. We're in recess for
8 15 minutes.

9 (Brief recess.)

10 THE COURT: We're back in the courtroom. Are we
11 ready to proceed to closing and getting the jury from the
12 government's perspective?

13 MR. MANGAN: Yes, we are, Your Honor.

14 THE COURT: And the defense?

15 MR. KOHNEN: Yes. Thank you, Judge.

16 THE COURT: Very well. Let's call for the jury.

17 (Jury in at 11:27 a.m.)

18 THE COURT: Thank you. You may all be seated. The
19 15 members of the jury have rejoined us after a break.

20 We're now going to proceed to closing argument.

21 The government goes first, followed by the defense. The
22 government gets the last word.

23 I think we'll break for lunch after the government's
24 closing argument.

25 Is the government prepared to proceed?

1 MR. MANGAN: We are, Your Honor.

2 THE COURT: Very well.

3 MR. MANGAN: Before I begin, Your Honor, we would
4 like to reserve some time for rebuttal.

5 THE COURT: Very well.

6 MR. MANGAN: May I proceed?

7 THE COURT: Yes, please.

8 (Excerpt of Proceedings Concluded at 11:30 a.m.)

9 * * *

10 C E R T I F I C A T E

11 - - -

12 I, M. SUE LOPREATO, RMR, CRR, certify that the foregoing
13 is a correct transcript from the record of proceedings in the
14 above-entitled matter.

15 /s/ M. Sue Lopreato
16 M. SUE LOPREATO, RMR, CRR
Official Court Reporter

February 13, 2022